STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:	)	
	)	
ANTHONY R. HOUSING and,	)	
COREY ROBINSON,	)	
Complainants,	)	Charge No.: 2006CF0498
	)	2006CF0497
	)	EEOC No.: 21BA53063
	)	ALS No.: 06-317
and	)	
	)	
UNIVERSITY OF CHICAGO,	)	
Respondent.	)	

ORDER

This matter coming before the Commission pursuant to a Recommended Order and Decision, the Complainant Anthony R. Housing's Exceptions filed thereto, and the Respondent's Motion to Strike the Complainant's Exceptions.

The Illinois Department of Human Rights is an additional statutory party that has conducted state action in this matter. They are named herein as an additional party of record. The Illinois Department of Human Rights did not participate in the Commission's consideration of this matter.

IT IS HEREBY ORDERED:

1. Pursuant to 775 ILCS §§ 5/8A-103(E)(1) & (3), the Commission has **DECLINED** further review in the above-captioned matter. The parties are hereby notified that the Administrative Law Judge's Recommended Order and Decision, entered on **March 31, 2010** has become the Order of the Commission.

2. The Respondent's Motion to Strike is hereby rendered moot and therefore **DENIED**.

STATE OF ILLINOIS)
) **Entered this 23rd day of March 2011**
HUMAN RIGHTS COMMISSION)

Commissioner Sakhawat Hussain

Commissioner Spencer Leak, Sr.

Commissioner Diane M. Viverito

STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:	)	
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ANTHONY R. HOUSING and COREY ROBINSON,	)	
	)	
	)	
Complainants,	)	**CHARGE NO.: 2006CF0498**
	)	**2006CF0497**
v.	)	**EEOC NO.: 21BA53063**
	)	**ALS NO.: 06-317**
UNIVERSITY OF CHICAGO,	)	
	)	
Respondent.	)	

RECOMMENDED ORDER AND DECISION

This matter is before me on Respondent's motion for summary decision. Respondent filed its motion on October 22, 2008. Complainants filed a response to the motion on December 1, 2008 and Respondent filed a reply on December 15, 2008. This matter is ready for a decision.

The Illinois Department of Human Rights is an additional statutory agency that has issued state actions in this matter and is, therefore, named herein as an additional party of record.

CONTENTIONS OF THE PARTIES

Complainants allege that Respondent subjected them to discrimination based on race in violation of the Illinois Human Rights Act (Act), 775 ILCS 5/1-101 *et seq.* Respondent contends that it is entitled to summary decision in its favor because the undisputed facts show that Complainants were not subjected to race discrimination. Complainants contend that issues of fact remain as to their claims of race discrimination and as to whether Respondent's articulated reason for discharging them was pretext for race discrimination.

FINDINGS OF FACT

The following facts were derived from uncontested facts in the record and were not the result of credibility determinations. All evidence was viewed in the light most favorable to Complainants.

1. Complainant Anthony R. Housing filed a Complaint with the Illinois Human Rights Commission (Commission) on September 29, 2006, alleging that Respondent subjected him to race discrimination in violation of the Act.

2. Complainant Corey L. Robinson filed a Complaint with the Commission on April 13, 2007, alleging that Respondent subjected him to race discrimination in violation of the Act.

3. On motion by Complainants, both Complaints were consolidated by order of the Chief Administrative Law Judge on June 11, 2007.

4. Respondent is the University of Chicago Joseph Regenstein Library (Library) located on the University of Chicago campus.

5. Both Complainants are Black/African American.

6. Responded hired Complainant, Anthony R. Housing, in August, 1994. Housing worked in various positions, including the position of Payroll Supervisor. On March 1, 2000, Housing was promoted to the position of Financial/Information Systems Manager for the Library and held that position until 2005. In this position, Complainant was responsible for managing the Library's daily financial activities, including accounting, budgeting, accounts payable and receivable, report development and distribution. Housing reported directly to Denise Weintraub, Library Administrative Manager. In January, 2005, Housing applied for and was awarded a higher-paying position outside of the Library, that of Financial Accounting Analyst in University Facilities Services. Housing remained in this position until he was discharged August 18, 2005.

7. Respondent hired Complainant, Corey L. Robinson, as a Human Resources Assistant in November, 2000, and promoted him to Payroll Supervisor for the Library on August 6, 2001. As Payroll Supervisor, Robinson was responsible for handling all payroll-related matters for the Library's workforce. Robinson also reported to Weintraub. Robinson remained in this position until he was discharged on August 18, 2005.

8. Respondent had a written policy on sexual harassment dated February, 2006, that was identical to the policy in effect at the time Housing and Robinson were employed by Respondent. Housing and Robinson received training on this policy and were provided a copy of it.

9. Section II of Respondent's policy on unlawful discrimination and harassment prohibits sexual harassment by a supervisor of a subordinate. Section V of the policy states that it is unwise and inappropriate for employees who have romantic relations with employees under their supervision to maintain their supervisory state and mandates that supervisors promptly report romantic relationships with subordinates to the appropriate supervisor.

10. E.R. was a 20-year-old female University of Chicago undergraduate majoring in English. Respondent hired E.R. as a part-time Library clerk in April, 2004. E.R. worked at the Library until October 25, 2004, when she resigned, citing "personal reasons." In June, 2005, E.R. met with Susan Art, Dean of Students for the Undergraduate College, and disclosed to Art that she had previously engaged in sexual relationships with Robinson and Housing. Art encouraged E.R. to disclose the sexual relationships to Respondent's Office of Employee/Labor Relations (E/LR).

11. Barbara Hundley-Lacour (Lacour) was an E/LR Specialist. In June, 2005, Lacour, who is African-American, was assigned by Sandra Bateman, Director of E/LR at the time, to investigate E.R.'s claim of harassment. During her investigation, which took place from June 20, 2005 until September 1, 2005, Lacour interviewed E.R., Robinson, Housing,

several other Library employees, and two of E.R. 's personal friends. Pursuant to her investigation, Lacour concluded that Robinson had padded E.R. 's time card so that she was paid for hours that she had not actually worked and that E.R. had been truthful as to her disclosure that Housing and Robinson had engaged in sexual conduct with her. Pursuant to her conclusions, Lacour determined that Housing and Robinson had violated the University's harassment policy, specifically its prohibition on supervisors engaging in romantic relationships with subordinates. Lacour further determined that these violations merited the Complainants' discharge.

12. In August, 2005, Lacour presented her findings and recommendation for discharge to Kathy Irving, who had succeeded Bateman as Interim Director of E/LR. Irving considered the investigation results and Lacour's recommendation. Irving discharged each Complainant by letter on August 18, 2005.

13. Ray Gadke is a white, non-supervisory Library employee who has worked for the University since 1967. In December, 2000, when Gadke held the position of Library Assistant II, a co-worker accused Gadke of inappropriately touching her. Irving was an E/LR Specialist at the time and was assigned to conduct the investigation. Irving conducted an investigation of the allegations and determined them to be credible. When presented with the allegations, Gadke immediately admitted that he had touched the co-worker in a way that he believed was merely friendly but which the co-worker felt was inappropriate. Gadke apologized and was suspended for five days without pay. Irving signed Gadke's discipline form indicating her conclusions and memorializing the suspension on December 28, 2000.

CONCLUSIONS OF LAW

1. The Illinois Human Rights Commission has jurisdiction over the parties and subject matter of this Complaint.
2. Respondent is an employer as defined by section 5/2-101(B)(1) of the Act.

3. Complainants are aggrieved parties as defined by section 5/1-103(B) of the Act.
4. This record presents no material issues of fact as to Complainants' race discrimination claims.
5. This record presents no material issues of fact as to whether Respondent's proffered reasons for discharging Complainants were pretext.

DETERMINATION

Respondent is entitled to summary decision in its favor as to the race discrimination claims by Complainants.

DISCUSSION

A Complainant bears the burden of proving discrimination by the preponderance of the evidence. Section 5/8A -102 (I) (1) of the Act. That burden may be satisfied by direct evidence that adverse action was taken for impermissible reasons or through indirect evidence in accordance with the method set out in *McDonnell Douglas Corp. v. Green*, 411 U.S. 793, 93 S. Ct. 1817 (1973), and *Texas Dept. of Community Affairs v. Burdine,* 450 U.S. 248, 101 S. Ct. 1089 (1981). This method of proof has been approved by the Illinois Supreme Court and adopted by the Commission in *Zaderaka v. Illinois Human Rights Commission*,131 Ill. 2d 172, 545 N.E.2d 684 (1989).

Under this three-step approach, a complainant must first establish a *prima facie* case of unlawful discrimination. Then, the burden shifts to the respondent to articulate a legitimate, non-discriminatory reason for its adverse action. Once the respondent successfully makes this articulation, the presumption of unlawful discrimination drops and the complainant is required to prove, by a preponderance of the evidence, that the respondent's articulated reason is a pretext for unlawful discrimination. The evidence presented does not support a claim as to the direct method; thus, both claims will be analyzed pursuant to the indirect method.

Anthony R. Housing

In his Complaint, Housing alleges that he was terminated based on his race. To prove a *prima facie* case of race discrimination, Complainant must show that: (1) he is a member of the protected class; (2) he was performing his job duties according to Respondent's legitimate expectations; (3) he suffered an adverse employment action; and (4) other individuals not within his protected class were treated more favorably. *Muhammad and Walsh/Traylor/McHugh*, IHRC, ALS No. 9466, March 13, 2002.

Elements one and three are not in dispute. Complainant is African-American and was discharged on August 18, 2005. However, Respondent successfully argues that Complainant cannot prove the second and fourth elements of his *prima facie* case. As to the second element, Respondent maintains that an employee who violates its sexual harassment policy is, as a matter of law, not performing his job duties according to Respondent's legitimate expectations (citing, *Biolchini v. General Electric Co.*, 167 F.3d 1151, 1154 (7th Cir. 1999)). The undisputed facts show that, following an investigation of alleged sexual harassment, Respondent determined that Complainant had engaged in a sexual relationship with a subordinate and that this conduct violated its sexual harassment policy. In support of its position, Respondent presents the affidavit and the interview notes of Lacour, Respondent's E/LR representative who conducted the investigation of the sexual harassment allegations, and the affidavit of Irving, the Interim Director of E/LR at the time of the investigation. Both affidavits aver that, following an investigation and considering the investigation notes, both Lacour and Irving concluded that Complainant violated its sexual harassment policy and that the seriousness of the violation warranted the discharge disciplinary action.

Although Complainant contends that Respondent's investigation was not conducted in a fair manner, Complainant presents absolutely no evidence to support this contention. Specifically, Complainant submits no counter affidavits and fails to point to any evidence from

which to infer that the investigation into the sexual harassment allegations was unfair. Complainant fails to establish the second element of his *prima facie* case.

Respondent also maintains that Complainant fails to demonstrate the fourth element of his *prima facie* case. Respondent points to Complainant's failure to identify any similarly situated employees who were treated more favorably than he. The record supports Respondent's argument. While Complainant alleges in his Complaint that similarly situated employees were treated more favorably than he and while Complainant also references in his response to this motion that two similarly situated employees were treated more favorably than he, Complainant fails to identify any such employees. Complainant fails to establish the fourth element of his *prima facie* case.

Because Complainant fails to put forth sufficient evidence to create a genuine issue of fact as to his *prima facie* case of race discrimination, Respondent is entitled to summary decision as to Housing's claims.

Corey L. Robinson

In his Complaint, Robinson alleges that he was terminated based on his race. Robinson's *prima facie* showing is identical to Housing's. To prove a *prima facie* case of race discrimination, Complainant must show that: (1) he is a member of the protected class; (2) he was performing his job duties according to Respondent's legitimate expectations; (3) he suffered an adverse employment action; and (4) other individuals not within his protected class were treated more favorably. *Muhammad and Walsh/Traylor/McHugh*, IHRC, ALS No. 9466, March 13, 2002.

Elements one and three are not in dispute. Complainant is African-American and was discharged August 18, 2005. For the same reasons as put forth in the previous analysis, Respondent again argues successfully that Complainant cannot prove the second and fourth elements of his *prima facie* case. Respondent maintains that Complainant here also violated its sexual harassment policy, and because of this, he cannot show that he was performing his job duties according to Respondent's legitimate expectations.

The undisputed facts show that, following an investigation of alleged sexual harassment, Respondent determined that Complainant had engaged in a sexual relationship with a subordinate and that this conduct violated its sexual harassment policy. In support of its position, Respondent presents the affidavit and the interview notes of Lacour, Respondent's E/LR representative who conducted the investigation of the sexual harassment allegations, and the affidavit of Irving, the Interim Director of E/LR at the time of the investigation. Both affidavits aver that, following an investigation and considering the investigation notes, both Lacour and Irving concluded that Complainant violated its sexual harassment policy and also committed fraud and dishonesty by falsifying the subordinate's time cards. Lacour and Irving further concluded that the seriousness of the violations warranted the discharge disciplinary action.

Although Complainant here also contends that Respondent's investigation was not conducted in a fair manner, Complainant presents absolutely no evidence to support this contention. Specifically, Complainant submits no counter affidavits and fails to point to any evidence from which to infer that the investigation was unfair. Complainant fails to establish the second element of his *prima facie* case.

Respondent also maintains that Complainant fails to demonstrate the fourth element of his *prima facie* case. Here, Complainant identifies Ray Gadke as a similarly situated employee who also violated Respondent's sexual harassment policy five years earlier, but who was not discharged.

While Respondent does not dispute that Gadke violated its sexual harassment policy, Respondent counters that Gadke is not similarly situated for this comparison. Respondent argues that Gadke and Robinson held different job positions, different titles and that Gadke was not a supervisory employee at the time of the violation. Respondent presents its Exhibit 21, which shows Gadke's position at the relevant time as Library Assistant II, a non-management position. Citing, *Goodwin v. Bd. Of Trustees of the Univ. of Illinois*, 442 F.3d 611, 618 (7th Cir. 2006) for the proposition that supervisors and subordinates are not similarly situated,

Respondent points out that Robinson's position was as Payroll Supervisor, obviously a supervisory position. Respondent persuasively argues that these positions are simply not comparable for a similar situated analysis. See, also, *Daugherty and Dewitt County Sheriff's Dept.*, IHRC, ALS No. S11345, April 3, 2002 (supervisory sergeant not similarly situated to his subordinate for a *prima facie* analysis); and *Patterson v. Avery Dennison*, 281 F.3d 676 (7th Cir.) (supervisor's additional experience is not comparable to a subordinate's for a similarly situated analysis).

Respondent further argues that Gadke is not similarly situated because his violative conduct was less serious than the conduct of Complainant. In her affidavit, Irving avers that she was an E/LR Specialist in 2000 and was assigned to investigate the sexual harassment complaint made by a co-worker against Gadke. Following her investigation, Gadke was found to have engaged in an inappropriate touching of the co-worker. Irving states that, during the investigation, Gadke immediately admitted to the conduct and expressed his apology. Gadke was disciplined with a five-day suspension without pay. Respondent contrasts Gadke's conduct of a one-time inappropriate touching with Complainant's conduct, which showed that Complainant engaged in a sexual relationship with a subordinate over a period of weeks and rewarded the subordinate for having sex with him by falsifying her time cards so that she would be paid for time she had not worked.

Complainant puts forth nothing to dispute this evidence. The undisputed facts support that Gadke is not similarly situated for this comparison; thus, Complainant fails to prove the fourth element of his *prima facie* case.

Pretext

Based on the foregoing analysis, Complainants have failed to point to anything in the record to establish that Respondent's proffered reasons for discharging them were motivated by their race.

This matter is being considered pursuant to Respondent's motion for summary decision. A summary decision is analogous to a summary judgment in the Circuit Court. *Cano v. Village of Dolton*, 250 Ill. App. 3d 130, 620 N.E.2d 1200 (1st Dist 1993). A motion for summary decision is to be granted when the pleadings, depositions, exhibits and affidavits on file reveal that no genuine issue of material fact exists and establish that the moving party is entitled to judgment as a matter of law. See, Section 5/8-106.1 of the Illinois Human Rights Act (Act), 775 ILCS 5/1-101 *et seq.*, and *Young v. Lemons*, 266 Ill. App. 3d 49, 51, 203 Ill. Dec. 290, 639 N.E.2d 610 (1st Dist. 1994). In determining whether a genuine issue of material fact exists, the record is construed in the light most favorable to the non-moving party, and strictly against the moving party. *Gatlin v. Ruder*, 137 Ill. 2d 284, 293, 148 Ill. Dec .188, 560 N.E.2d 586 (1990); *Soderlund Brothers, Inc., v. Carrier Corp.*, 278 Ill. App. 3d 606, 614, 215 Ill. Dec. 251, 663 N.E.2d 1 (1st Dist. 1995). A summary order is a drastic method of disposing of a case and should be granted only if the right of the moving party is clear and free from doubt. *Loyola Academy v. S&S Roof Maintenance, Inc.*, 146 Ill.2d 263, 271, 166 Ill. Dec. 882, 586 N.E.2d 1211 (1992); *McCullough v Gallaher & Speck*, 254 Ill. App. 3d 941, 948, 194 Ill. Dec. 86, 627 N.E.2d 202 (1st Dist. 1993).

Although Complainants are not required to prove their case to defeat the motion, they are required to present some factual basis that would arguably entitle them to a judgment under the law. *Brick v City of Quincy*, 241 Ill. App. 3d 119, 608 N.E.2d 920, 181 Ill. Dec .669 (4th Dist. 1993) citing, *inter alia, West v Deere & Co.*, 145 Ill. 2d. 177, 182, 164 Ill. Dec. 122, 124, 582 N.E.2d 685, 687 (1991).

This record presents no material issues of fact as to Complainants' claims of race discrimination; thus Respondent is entitled to summary decision as to all claims by each Complainant.

RECOMMENDATION

Accordingly, I recommend that the Complaints and underlying Charges be dismissed with prejudice as to each Complainant.

HUMAN RIGHTS COMMISSION

March 31, 2010

SABRINA M. PATCH
Administrative Law Judge
Administrative Law Section